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AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 1274.

THE COUNTY OF LINCOLN, PLAINTIFF IN ERROR,

vs.

NICHOLAS LUNING.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEVADA.

FILED OCTOBER 1, 1889.

Lincoln vs Luning
same vs Vincent

SUPREME COURT OF THE UNITED STATES.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, DECEMBER 5, 1889.

1–34 In the Circuit Court of the United States (9th Circuit) in and for the District of Nevada.

NICHOLAS LUNING, Plaintiff,
vs.
LINCOLN COUNTY, Defendant.

The plaintiff complains of the defendant, and for cause of action against it avers—

* * * * * * *

35–152 The plaintiff, for another and further cause of action against defendant, avers—

A.

That the plaintiff is a citizen of the Kingdom of Prussia, Empire of Germany.

B.

That the defendant ever since the 26th day of February, 1866, has been and yet is a body politic and corporate, to wit, a duly organized and existing county of and within the State of Nevada, organized under and by virtue of a statute of said State of Nevada entitled "An act to create the county of Lincoln and provide for its organization," which act was approved February 26th, 1866, and said defendant is a citizen of the said State of Nevada.

C.

That at its sixth session and in the year 1873 the Legislature of said State of Nevada passed an act entitled "An act to consolidate and fund the indebtedness of Lincoln county," which act was approved February 17th, 1873.

That the defendant thereafter, on the 1st day of March, 1873, under and pursuant to said last-named statute, made, executed, and delivered to Wells, Fargo & Co. its bond, signed by the chairman of its board of county commissioners, countersigned by ity county auditor, and endorsed by its county treasurer, which bond is in the words and figures following:

No. 157. STATE OF NEVADA, *Lincoln County.* $100.

Lincoln County Bond.

In accordance with an act of the Legislature of the State of Nevada entitled "An act to consolidate and fund the indebtedness of Lincoln county, approved February 17th, A. D. 1873," the county of Lincoln, in the State of Nevada, promises to pay to Wells, Fargo & Co. or the holder hereof, at the office of the treasurer of said county, on or before the first day of January, A. D. one thousand eight hundred and eighty-three, in the manner provided in said act,

the sum of one hundred dollars in United States gold coin, together with interest thereon from the date hereof at the rate of ten per cent. per annum, payable in like gold coin annually, at the county treasurer's office aforesaid, on the first day of January of each year, upon the surrender of the annexed respective coupons.

In witness whereof and in accordance with the act aforesaid this bond is signed by the chairman of the board of county commissioners and countersigned by the county auditor and endorsed by the county treasurer, with the seal of the county hereto affixed, and the chairman of said board and county treasurer have signed the annexed coupons as of the first day of March, A. D. one thousand eight hundred and seventy-three.

[Seal of County.]

D. A. FULKS,
Chairman Board County Commissioners.

Countersigned by—
W. H. HENDERSON,
County Auditor.

The said bond is endorsed, "John Roeder, county treasurer," and across its face is printed in red ink $100. To this bond was annexed ten coupons for interest falling due each year upon said bond. Each coupon was for the sum of $10, and each was signed by the chairman of the board of county commissioners and by the county treasurer, and in all respects complied with the provisions of said funding act. The coupon for interest due January 1st, 1874, on said bond was numbered in red ink on the face of the coupon 1. The coupon for interest due January 1st, 1875, on said bond was numbered in red ink on the face of the coupon 2. The coupon for interest due January 1st, 1876, on said bond was numbered in red ink on the face of the coupon 3. The coupon for interest due January 1st, 1877, on said bond was numbered in red ink on the face of the coupon 4. The coupon for interest due January 1st, 1878, on said bond was numbered in red ink on the face of the coupon 5. The coupon for interest due January 1st, 1879, on said bond was numbered in red ink on the face of the coupon 6. The coupon for interest due January 1st, 1880, on said bond was numbered in red on the face of the coupon 7. The coupon for interest due January 1st, 1881, on said bond was numbered in red ink on the face of the coupon 8. The coupon for interest due January 1st, 1882, on said bond was numbered in red ink on the face of the coupon 9. The coupon for interest due January 1st, 1883, on said bond was numbered in red ink on the face of the coupon 10; that said bond and all said coupons numbered 5, 6, 7, 8, 9, & 10 remain unpaid.

D.

That after the issuing of said bond and coupons and before the filing of this complaint the said bond and said unpaid coupons were by the owner and holder thereof transferred and delivered to plaintiff, who is now the owner and holder thereof.

E.

That at its eighth session and in the year 1877 the Legislature of the State of Nevada passed an act entitled "An act to amend an act entitled 'An act to consolidate and fund the indebtedness of Lincoln county, approved February 17, 1873,'" which act was approved on January 18th, 1877.

That at no time has there been any money in the interest fund of defendant to pay said bond or any of said unpaid coupons, and under and in pursuance of said last-named act each of said unpaid coupons was, within one year after it fell due, presented to the county treasurer of said Lincoln county for payment and payment demanded, but each and all of said coupons remain unpaid because the money in said interest fund was and is exhausted, and the said treasurer on such presentation of coupons failed and refused to pay the same or any of them, but indorsed on each of such coupons his certificate of registration, as in said last-named act provided.

F.

That there is now due, owing, and unpaid to plaintiff on said bond number 157 and said unpaid coupons for interest due on such bond the sum of $160 in gold coin, together with interest on such bond and coupons from the date of maturity of each at the rate of ten per cent. per annum.

* * * * * * *

153 Wherefore plaintiff prays judgment against defendant for the sum of seventy thousand and eighty dollars in gold coin, together with interest on the sum of $480 of said amount from January 1st, 1878, at the rate of 10 per cent. per annum, and on the sum of $4,640 of said amount from January 1st, 1879, at the rate of 10 per cent. per annum, and on the sum of $4,640 of said amount from January 1st, 1880, at the rate of 10 per cent. per annum, and on the sum of $4,640 of said amount from January 1st, 1881, at the rate of 10 per cent. per annum, and on the sum of $4,640 of said amount from January 1st, 1882, at the rate of 10 per cent. per annum, and on the sum of $51,040 of said amount from January 1st, 1883, at the rate of 10 per cent. per annum, and costs of suit.

FREEMAN, BATES & RANKIN,
Attorneys for Plaintiff.

154 STATE OF CALIFORNIA, }
City and County of San Francisco, } *ss:*

Nicholas Luning, being duly sworn, on oath says: I am the plaintiff in the foregoing action. I have heard read the complaint and know its contents, and the same is true of my own knowledge except as to matters therein stated on information and belief, and as to these matters I believe it to be true.

NICHOLAS LUNING.

Subscribed and sworn to before me this 10th day of August, 1886.
[SEAL.] JNO. F. LYONS,
Notary Public.

155–160 [Endorsed:] In the circuit court of the U. S. (9th circuit), district of Nevada. Nicholas Luning, pl'ff, *vs.* Lincoln County, def't. Complaint. Action at law to recover on bonds and coupons of Lincoln Co. Filed Aug. 20th, 1886. T. J. Edwards, clerk. Freeman, Bates & Rankin, att'ys for plaintiff.

161 *Answer.*

In the Circuit Court of the United States, Ninth Circuit and District of Nevada.

NICHOLAS LUNING, Plaintiff,
vs.
LINCOLN COUNTY, Defendant.

Now comes the above-named defendant, by its attorneys, and for answer to plaintiff's complaint herein denies and alleges as follows:

Denies each and every allegation in said complaint marked "D" as the same appears on each and every page of said complaint.

Denies that plaintiff is the owner and holder of the bonds and coupons mentioned in said complaint or any part thereof.

Denies that there is any sum of money whatever due upon said bonds or coupons mentioned in said complaint as or for interest thereon after the maturity of said bonds or coupons.

162 Defendant further shows to the court that plaintiff's complaint does not state facts sufficient to constitute a cause of action or to entitle him to any judgment for interest upon any of said bonds or coupons after their maturity, but avers and shows to the court that it appears upon the face of said complaint that neither said bonds nor interest coupons thereto attached bear any rate of interest whatever from or after their maturity.

Defendant further avers and shows to the court that no action can be maintained or judgment had upon any of the interest coupons numbered five (5), six (6), seven (7), eight (8), and nine (9) and annexed to said bonds, as set out in said complaint, but that the same are barred by reason of the provisions of an act entitled "An act defining the time of commencing civil actions," approved November 21st, 1861, and an act entitled "An act amendatory of and supplementary to an act entitled An act defining the time of commencing civil actions," approved November twenty-first,

163 one thousand eight hundred and sixty-one, and to repeal acts amendatory of said act approved March 5th, 1867, and by reason of the provisions of an act of the Legislature of the State of Nevada entitled "An act to amend an act amendatory of and supplementary to an act entitled An act defining the time of commencing civil actions, approved November twenty-first, one thou-

sand eight hundred and sixty-one, and to repeal acts amendatory of said act approved March fifth, one thousand eight hundred and sixty-seven," approved March 2d, 1877.

That none of the causes of action represented by said interest coupons annexed to said bonds and numbered five (5), six (6), seven (7), eight (8), and nine (9), as set out in said complaint, accrued within four years of the time of the commencing of said action.

Wherefore defendant prays that plaintiff take judgment for no more than the principal of said bonds and the amount of the coupons thereto attached, numbered ten (10), and that no
164 part of said judgment bear interest at any rate whatever.

T. J. OSBORNE AND
TRENMOR COFFIN,
Attorneys for Defendant.

STATE OF NEVADA, }
County of Ormsby, } *ss:*

Trenmor Coffin, being first duly sworn, doth depose and say that he is one of the attorneys for defendant in the above-entitled action; that he has read the above and foregoing answer and knows the contents thereof, and that the same is true of his own knowledge except as to the matters therein stated on his information and belief, and that as to those matters he believes it to be true; that the reason this verification is made by affiant is that he resides in Ormsby county, Nevada, and that defendant neither resides in nor is present in said county.

TRENMOR COFFIN.

Subscribed and sworn to before me this 7th day of April, 1887.
T. J. EDWARDS, *Clerk.*

Endorsed: In U. S. circuit court, 9th circuit, district of Nevada. Nicholas Luning *vs.* Lincoln County. Answer. Filed April 7, 1887. T. J. Edwards, clerk. T. J. Osborne and Trenmor Coffin, att'ys for defendant.

165–167 *Amendments to Complaint.*

In the Circuit Court of the United States, Ninth Circuit, in and for the District of Nevada.

NICHOLAS LUNING, Plaintiff, }
vs.
LINCOLN COUNTY, Defendant. }

The plaintiff, by leave of the court, amends his complaint in the following respects:

1.

Amend each and every subdivision "D" thereof so as to read as follows:

D.

That after the issuing of said bonds and coupons and before January 1, 1883, the said bond and the said unpaid coupons were by the owner and holder thereof, for a valuable consideration to him then paid, transferred to plaintiff by the delivery thereof to plaintiff, who has ever since been and yet is the owner and holder thereof.

* * * * * * *

168 9.

Add to subdivision "C" of each count and cause of action upon bonds issued to and in favor of Wells, Fargo and Company the following: Each of said coupons was by its terms payable to the holder thereof. The said Wells-Fargo was at the date of said bond and has ever since continued to be a corporation, and since the
169 year 1876 it has ever been and yet is a citizen and resident of the State of Colorado and a non-resident of the State of Nevada.

* * * * * * *

170 12.

Add to subdivision "C" of each count of said complaint not hereinbefore specially named the following: Each of said coupons was by its terms payable to the holder thereof.

FREEMAN, BATES AND RANKIN,
Attorneys for Plaintiff.

STATE OF CALIFORNIA,
City and County of San Francisco, } ss:

Nicholas Luning, being duly sworn, on oath says: I am the plaintiff in the foregoing action. I have read the foregoing amendments to the complaint herein and know the contents thereof. Said amendments are true of my own knowledge except as to matters therein stated on my information and belief, and as to those matters I believe them to be true.

NICHOLAS LUNING.

Subscribed & sworn to before me this 29th day of December, 1887.

GEO. T. KNOX,
171 & 172 [SEAL.] *A Commissioner for the State of Nevada in San Francisco, California.*

Endorsed: In the circuit court of U. S., 9th circuit, in & for Nevada. Nicholas Luning *vs.* Lincoln County. Amendments to complaint. Filed Jan'y 6, 1888. T. J. Edwards, clerk. Freeman, Bates & Rankin, attorneys-at-law, 409 California street, San Francisco.

* * * * * * *

173 *Findings.*

In the Circuit Court of the United States, Ninth Circuit, for District of Nevada.

NICHOLAS LUNING, Plaintiff,
vs.
LINCOLN COUNTY, Defendant.

This cause was tried before the court on the 4th day of June, 1888 (a jury having been waived), and was by the court taken under advisement. The court now, being fully advised in the premises, finds and decides—

1.

All the allegations contained in subdivisions A, B, C, and E of each and every cause of action set forth in plaintiff's complaint are true as alleged.

2.

All the bonds and coupons sued upon in this action are transferrable by delivery, and prior to the commencement of this action each and all of them were transferred and delivered by the then owners of them to the plaintiff in this action, and he has at all times thereafter continued to own and hold the same.

3.

The aggregate amount of the bonds of defendant owned
174 and held by plaintiff, as set forth in finding two hereof, is $46,400. All said bonds were issued by defendant and dated March 1st, 1873, and matured and became payable on January 1st, 1883, and are valid and subsisting obligations against defendant. Said bonds by their terms bore interest from their date at the rate of ten (10) per cent. per annum, payable annually in gold coin on the first day of January of each year. Coupons representing the amount of annual interest which would accrue on said bonds at and prior to the date of their maturity were attached to each bond and were numbered according to the year's interest which they were intended to represent, coupon numbered one being for the first year's interest, which was due on January 1st, 1874, and so on. The last coupon on said bond was numbered ten and was for the year's interest due on January 1st, 1883. None of plaintiff's bonds are or at the commencement of this action were barred by any statute of limitations or otherwise. All of said bonds bear interest from their date of maturity, to wit, from January 1st, 1883, at the rate of ten
175 per cent. per annum. The total amount due and owing from defendant to plaintiff for interest after maturity on said bonds is the sum of $27,156.87 (twenty-seven thousand one hundred fifty-six and $\frac{87}{100}$ dollars).

4.

At and prior to the date of the commencement of this action and at all times thereafter plaintiff was and yet is the owner and holder of certain coupons detached from bonds of defendant, which coupons are particularly described in his complaint herein. Said coupons aggregate in value the sum of $23,680, and they matured and became due and payable at the following times, to wit:

$480	of	coupons	fell	due	January	1st, 1878.
$4,640	"	"	"	"	"	1879.
$4,640	"	"	"	"	"	1880.
$4,640	"	"	"	"	"	1881.
$4,640	"	"	"	"	"	1882.
$4,640	"	"	"	"	"	1883.

All of said coupons as they fell due were presented to the treasurer of defendant and payment of them demanded and refused. Payment was refused because there was no money in the treasury of defendant applicable to their payment.

176 At its eighth session the Legislature of the State of Nevada passed an act entitled "An act to amend an act entitled 'An act to consolidate and fund the indebtedness of Lincoln county.'" This amendment was approved and became a law on January 18th, 1877, and has never been amended or repealed.

Acting as provided for in this act, the treasurer of defendant, as fast as matured coupons were presented to him for payment, which he could not pay for want of funds, indorsed on each coupon his certificate of registration, as in said act provided, and thereupon returned said coupon to the party presenting it. After making registration the treasurer of defendant paid coupons in the order of their registration and maturity as money came into his possession applicable thereto.

At and prior to the date of the institution of this suit no money had ever come into the possession of the treasurer of defendant which was applicable to the payment of any of plaintiff's coupons.

Plaintiff's coupons due January 1st, 1883, and all prior years are legal, valid, and subsisting claims against defendant, and are

177 not barred by the provisions of any statute of limitations or otherwise. Said coupons do not bear interest, compound interest not being lawful in the State of Nevada.

I conclude the law to be that plaintiff is entitled to judgment against defendant for the sum of $97,236.87 in gold coin and costs of suit.

That the principal of said judgment, to wit, $46,400, bears interest at 10 per cent. per annum from the date of its entry until paid.

Let judgment be so entered.

Dated Nov. 8th, 1888.

GEO. M. SABIN, *Judge.*

Endorsed: Circuit court United States, 9th circuit, district of Nevada. Nicholas Luning, pl'ff, *vs.* Lincoln County, def't. Find-

ings. Filed Nov. 8, 1888. T. J. Edwards, clerk. Freeman, Bates & Rankin, att'ys for pl'ff.

178 *Judgment.*

In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

NICHOLAS LUNING, Plaintiff,
vs.
LINCOLN COUNTY, Defendant.

This cause having been tried before the court without a jury and submitted for decision, and the court having now filed its findings of fact and conclusions of law and ordered judgment in accordance thereof—

Wherefore, by reason of the law and the findings aforesaid, it is ordered and adjudged that Nicholas Luning, the plaintiff, do have and recover of and from Lincoln County, the defendant, the sum of ninety-seven thousand two hundred & thirty-six $\frac{87}{100}$ ($97,236.87) dollars in gold coin of the United States, together with the plaintiff's costs and disbursements incurred in said action, hereby taxed at the sum of six hundred eighty-eight & $\frac{62}{100}$ dollars.

That plaintiff also have and recover from defendant interest on $46,400 of said judgment at the rate of ten per cent. per
179 annum from the date of entry hereof until paid.

Dated Nov. 8, 1888.

Attest: T. J. EDWARDS, *Clerk.*

UNITED STATES OF AMERICA, *District of Nevada,* } *ss:*

I, T. J. Edwards, clerk of the circuit court of the United States for the district of Nevada, do hereby certify that the above and foregoing is a full, true, and correct copy of the original judgment now of record in my office, and that the annexed record is the judgment-roll in said action.

In testimony whereof I have hereunto set my hand and
[SEAL.] affixed the seal of the said court, at my office, in Carson City, this the 8th day of November, A. D. 1888, and in the year of our Independence the 113th.

T. J. EDWARDS, *Clerk.*

Endorsed: U. S. cir. court, dist. Nevada. Nicholas Luning *vs.* Lincoln County. Judgment-roll. Filed Nov'r 8, 1888. T. J. Edwards, clerk.

180 *Opinion.*

In the Circuit Court of the United States, Ninth Circuit, District of Nevada.

CHARLES SUTRO *vs.* LINCOLN COUNTY.

NICHOLAS LUNING *vs.* LINCOLN COUNTY.

C. D. VINCENT *vs.* LINCOLN COUNTY.

The above-entitled cases are alike as to cause of action, and the same principles of law control the recovery in each case.

No contention has been made as to the legality of the bonds and coupons sued upon.

Had there been any contest on this point the case of Odd Fellows' Savings and Commercial Bank *vs.* Quillen, county treasurer of Lincoln county, reported in 11th Nevada Reports, page 103, must be considered as decisive of that question. In that case the validity of the bonds in suit was made a matter of contest and was directly considered and passed upon by the court and their validity established. See also Youngs *vs.* Hall, 9 Nev., 212.

Upon the submission of these cases to the court upon the
181 pleadings and evidence three questions arise which must be decided in determining the amount of recovery to be had in each case.

These questions are correctly stated in plaintiff's brief as follows:

1st. Do the bonds in suit draw interest after their maturity, and at what rate?

2d. Do the coupons draw interest after their several dates of maturity, and at what rate?

3d. Are any of the coupons barred by limitation?

These questions will be answered in their order as above stated.

1st. The bonds in suit draw interest after maturity and "until said bonds are paid and liquidated" at the rate of ten per cent. per annum upon the principal sum of each of said bonds.

Stats. Nev., 1873, p. 54, sec. 2.
Gen'l Stats. Nev., p. 1088, sec. 4904.
McLane *vs.* Abrams, 2 Nev. Rep'ts, 199.

2d. The coupons sued upon do not draw interest after their maturity. Compound interest is not permissible under the laws of Nevada, not even where parties have so contracted.

Gen'l Stats. Nev., p. 1088, secs. 4903–'4.
182 Cox *vs.* Smith, 1 Nev. Rep., p. 161.

3d. None of the coupons sued upon in any of these cases are barred by the statute of limitations of Nevada.

Comp. Laws Nev., vol. 1, p. 247, sec. 1031.
Stats. Nev., 1877, p. 114.
Gen'l Stats. Nev., p. 878, secs. 3644, 3646.
Stats. Nev., 1873, p. 54, secs 8, 9.
" " 1877, p. 46, sec. 1.
Underhill *vs.* Trustees of City of Sonora, 17 Cal., p. 172.
Freehill *vs.* Chamberlain, treasurer of the city of Sacramento, 65 Cal., 603.

I should have little hesitancy in holding the coupons barred, as claimed by defendant's attorneys, did I not consider them, under the authorities above cited, withdrawn from the operation of the statute by the provisions of the Statute- of Nevada of 1877, above cited.

The cases will be referred to a referee to ascertain and report to the court the amount due to plaintiff in each of the cases upon the principles above stated.

The report of the referee in each case will show—

1st. The amount due plaintiff upon the bonds in suit as
183 the principal thereof.

2d. The amount due upon said bonds as interest thereon after maturity at the rate of ten per centum per annum to the date of such report.

3d. The amount due upon the coupons sued upon in each case without interest.

Judgment will be entered in each case for the principal amount of the bonds sued upon, with interest thereon from maturity to the date of judgment, together with the amount due upon the coupons sued upon without interest on said coupons, and for costs.

The judgments will draw interest upon the principal sum due on said bonds, exclusive of interest thereon and the amount due upon coupons, at the rate of ten per cent. per annum until said judgments are paid.

Nov. 7th, 1888.

GEO. M. SABIN, *Judge.*

Endorsed: U. S. circuit court, 9th circuit, dist. Nevada. Chas. Sutro *vs.* Lincoln Co.; N. Luning *vs.* Lincoln Co.; C. D. Vincent *vs.* Lincoln County. Opinion of court. Filed Nov. 8, 1888. T. J. Edwards, clerk.

184 *Order Fixing Bond on Writ of Error.*

Minutes of court fixing amount of bond on writ of error.

JULY 8TH, 1889.

NICHOLAS LUNING
v.
LINCOLN COUNTY.

On motion of Mr. Coffin, of counsel for defendant, it is ordered

that a writ of error be allowed in this case upon the filing by defendant of a bond for costs in the sum of three hundred dollars.

Bond on Writ of Error.

Supreme Court of the United States.

LINCOLN COUNTY, Plaintiff in Error,
vs.
NICHOLAS LUNING, Defendant in Error.

Know all men by these presents that we, The County of Lincoln, as principal, and Joseph Ponjade and Henry Eilers, as sureties, are held and firmly bound unto Nicholas Luning in the sum of three hundred dollars, lawful money of the United States of America, to be paid to the said Nicholas Luning, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, and administrators, firmly by these presents.

185

Sealed with our seals and dated this 29th day of July, A. D. 1889.

Whereas the above-named County of Lincoln hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled action by the circuit court of the United States, ninth circuit, district of Nevada: Now, therefore, the condition of this obligation is such that if the above-named County of Lincoln shall prosecute its said writ of error to effect and answer all costs if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

[SEAL.] H. W. TURNER,
Chairman of the Board of County Commissioners of said County of Lincoln, with the Seal of said County Affixed.
J. PONJADE. [SEAL.]
HENRY EILERS. [SEAL.]

186 *Bond on Writ of Error.*

UNITED STATES OF AMERICA,
State of Nevada, County of Lincoln, } *ss:*

Joseph Ponjade and Henry Eilers, the sureties on the foregoing bond, being duly sworn, on oath says, each for himself and not one for the other, that he is a citizen and resident of said State and district of Nevada and is a freeholder therein, and that he is worth double the sum specified in said foregoing bond in property situate in said State and district over and above all his debts and liabilities and exclusive of property exempt from execution.

J. PONJADE.
HENRY EILERS.

Subscribed and sworn to before me this 29th day of July, A. D. 1889.

[SEAL.] T. J. OSBORNE,
Notary Public, Lincoln County, Nevada.

Endorsed: Supreme Court of the United States. Lincoln County, pl'ff in error, *vs.* Nicholas Luning, def't in error. Bond on writ of error. Approved Sept. 2d, 1889. Geo. M. Sabin, judge. Filed Sept. 2, 1889. T. J. Edwards, clerk U. S. cir. court, dist. Nevada.

187 Supreme Court of the United States.

THE COUNTY OF LINCOLN, Plaintiff in Error,
vs.
NICHOLAS LUNING, Defendant in Error.

UNITED STATES OF AMERICA, *ss:*

To Nicholas Luning, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the District of Nevada, wherein The County of Lincoln is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 2nd day of September, in the year of our Lord one thousand eight hundred and eighty-nine.

GEO. M. SABIN, *Judge.*

188 [Endorsed:] Supreme Court of the United States. The County of Lincoln, pl't'f in error, *vs.* Nicholas Luning, def't in error. Citation. Filed Sept. 2d, 1889. T. J. Edwards, clerk U. S. cir. court, dist. Nevada.

DISTRICT OF NEVADA, *ss:*

T. J. Edwards, being first duly sworn, on oath says he is the clerk of the circuit court of the United States for the district of Nevada; that on the 2d day of September, 1889, he served the within citation on Messrs. Freeman, Bates and Rankin, attorneys for said Nicholas Luning, by depositing in the United States post office at Carson City, Nevada, postage prepaid, a copy thereof addressed to said Messrs. Freeman, Bates and Rankin, at their office, to wit, 409 California street, San Francisco, Cala.

T. J. EDWARDS.

Subscribed and sworn to before me this second day of September, 1889.

GEO. M. SABIN,
U. S. District Judge, District of Nevada.

189 In the Supreme Court of the United States.

THE COUNTY OF LINCOLN, Plaintiff in Error,
vs.
NICHOLAS LUNING, Defendant in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the district of Nevada, Greeting:

Because in the record and proceedings and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Nicholas Luning and The County of Lincoln, a manifest error hath happened, to the great damage of the said County of Lincoln, as by *his* complaint appears, we, being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the 14th day of October, A. D. 1889, being the second Monday thereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice
190 of the said Supreme Court, the 2d day of September, in the year of our Lord one thousand eight hundred and eighty-nine.

[Seal U. S. Circuit Court, Ninth Circuit, District of Nevada.]

T. J. EDWARDS,
Clerk U. S. Circuit Court, 9th Circuit, District of Nevada.

191 [Endorsed:] Supreme Court of the United States. The County of Lincoln, pl't'f in error, *vs.* Nicholas Luning, def't in error. Writ of error. Copy hereof lodged in the clerk's office for the defendant in error on the second day of September, 1889. T. J. Edwards, clerk. Filed Sept. 2d, 1889. T. J. Edwards, clerk U. S. cir. court, dist. Nevada.

192 *Assignment of Errors.*

In the Supreme Court of the United States.

THE COUNTY OF LINCOLN, Pl'ff in Error,
v.
NICHOLAS LUNING, Def't in Error.

The said plaintiff in error submits the following assignments of error in the making, rendering, and entering the judgment in said above-entitled action, to wit:

1.

The circuit court erred in entertaining or exercising jurisdiction over the parties to or subject-matters of said action for the reasons—

First. That said plaintiff in error was and is an integral part of the State of Nevada and could not and cannot be sued except by the consent of the State and in conformity with its statutes, none of which permit or permitted said plaintiff in error to be sued in the said circuit court; and,

Second. The act under which said bonds and coupons sued upon in said action are alleged to have been issued specifically provides for all litigation concerning the same and names the court which
193 shall have jurisdiction thereof, which is not said circuit court.

2.

The said circuit court erred in making, giving, rendering, or entering the judgment in said entitled action for the reason that the complaint therein does not state facts sufficient to constitute a cause of action, but affirmatively shows that no cause of action ever existed in favor of said plaintiff (defendant in error) against said defendant (plaintiff in error), in that—

First. It is not alleged in said complaint or shown thereby that the payment of said bonds and coupons or any of them was ever demanded at the place where they were made payable.

Second. It is not alleged in or shown by said complaint that said bonds or coupons or any of them were ever presented to the board of county commissioners and auditor of said county of Lincoln for allowance or rejection.

Third. It appears from said complaint that said bonds and
194 coupons are payable, if payable at all, from a specific fund provided therefor, and therefore an action of debt against the county at large cannot be maintained thereon.

Fourth. It is not alleged in said complaint nor does it appear thereby that said county of Lincoln was authorized by the Legislature of the State of Nevada to issue the bonds or coupons sued upon.

Fifth. It is not alleged in said complaint nor does it appear thereby that said county of Lincoln ever issued as its act and deed any of the bonds or coupons sued upon in said action.

Sixth. It is shown by said complaint that the act of the Legislature of the State of Nevada referred — therein and made a part thereof is void as being in contravention of the constitution of said State of Nevada, in that (1) the subject of said act is not expressed in the title thereof, and (2) the said act attempts to create and inject into the government of The County of Lincoln, the plaintiff in error, a board of officers unknown to and unrecognized by said con-
195 stitution, and which is not created or provided for any other county in the State, and imposing duties upon and granting powers to such board which are anomalous and extraordinary.

3.

The said circuit court erred in not sustaining the plea of the statute of limitations to the coupons set forth in said answer of said plaintiff in error.

4.

Said judgment is absolutely void as being against a defendant which never had an existence.

Wherefore said plaintiff in error prays for a reversal of said judgment upon the writ of error herein sued out.

TRENMOR COFFIN,
T. J. OSBORNE, AND
GEO. S. SAWYER,
Att'ys for Defendant in Circuit Court.

Endorsed: Supreme Court of the United States. The County of Lincoln, pl'ff in error, *vs.* Nicholas Luning, def't in error. Assignment of errors and prayer for reversal. Filed Sept. 2d, 1889. T. J. Edwards, clerk U. S. cir. court, dist. of Nevada.

196 In the United States Circuit Court, Ninth Circuit and District of Nevada.

NICHOLAS LUNING, Plaintiff,
v.
LINCOLN COUNTY, Defendant.

I, T. J. Edwards, clerk of the circuit court of the United States for the ninth circuit and district of Nevada, do hereby certify that the foregoing one hundred and ninety-five pages, printed and written, numbered from 1 to 195, both inclusive, are a true copy of the record and of all the proceedings in the cause therein entitled, and that the same together constitute the return to the annexed writ of error.

Witness my hand and the seal of said circuit court this 6th day of September, A. D. 1889.

[Seal U. S. Circuit Court, Ninth Circuit, District of Nevada.]

T. J. EDWARDS, *Clerk.*

197 In the Supreme Court of the United States.

THE COUNTY OF LINCOLN, Plaintiff in Error,
vs.
NICHOLAS LUNING, Defendant in Error.

Stipulution.

It is hereby stipulated and agreed by and between the parties to the above-entitled action, acting through their duly authorized attorneys, that the printed record to be used in the Supreme Court

of the United States upon the hearing of said cause shall consist of the following, to wit:

Page thirty-five (35) of the complaint, as amended January 6th, 1888, being a count upon a bond issued in the name of Wells, Fargo & Co., the answer, findings, judgment, and this stipulation.

It is further stipulated and agreed that there are other
198 counts in said complaint upon other bonds and coupons, aggregating the amount for which judgment was rendered in accordance with the prayer of the complaint, and that the same principles are involved in each count.

It is further stipulated and agreed that said cause may be submitted to the court upon printed arguments in accordance with rule 20.

H. F. BARTINE,
Attorney for Plaintiff in Error.
ABRAHAM CLARK FREEMAN,
Attorney for Defendant in Error.

199 [Endorsed:] Supreme Court U. S. 1889, October term. No. 1274. The County of Lincoln, pl'ff in error, *vs.* Nicholas Luning. Stipulation as to printing record & to submit under 20th rule.

[Stamped:] Office Supreme Court U. S. Filed Nov. 29, 1889. James H. McKenney, clerk.

Endorsed on cover: Nevada C. C. U. S. No. 1274. The County of Lincoln, plaintiff in error, *vs.* Nicholas Luning. Filed October 1, 1889.